



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for May 2011



TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS.....	9
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS	12
IV	MONITORING OF THE ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	12
	REGULATORY BODIES	12
	STATE AUTHORITIES	14
	COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	16
V	THE DIGITALIZATION PROCESS	17
VI	THE PRIVATIZATION PROCESS.....	18
VII	CONCLUSION	19

I FREEDOM OF EXPRESSION

In the period covered by this Report, there were several cases pointing to possible violations of freedom of expression.

1. Threats and pressures

1.1. In the night of May 4, 2011, the offices of the weekly “Vranjske” in downtown Valjevo were robbed, when seven laptops and two cameras were stolen, Nikola Lazic, the Deputy Editor-in-Chief said. “It is the fourth burglary since the newspaper was established 16 years ago, but this is the first time that something was stolen. Before the burglars used to just make a mess of everything and break the windows”, Lazic told the Beta news agency. “We had all kinds of different stuff in the stolen computers, I will not speculate now since the police are conducting an investigation”, Lazic added. The Editor-in-Chief of “Vranjske” Vukasin Obradovic, who is also the President of NUNS, told “Politika” that the police had until now failed to solve a single burglary in “Vranjske”’s premises, despite the fact that the latter are situated merely 500 meters away from the police station and less than 50 meters from the courthouse. “Fortunately, the thieves did not take away the main stationary computer containing important archives. Nonetheless, the damage is great, because all our work equipment has been stolen. I expect that the police will find the perpetrators and return our equipment,” Obradovic says.

According to the Public Information Law, public information shall be free and in the interest of the citizens. It is prohibited to restrict freedom of public information in any way so as to restrict the free flow of ideas, information and opinions. The Law expressly provides that it shall be prohibited to put any kind of pressure on a public media and its personnel, as well as exercise any kind of influence so as to obstruct them in doing their job. In the concrete case, taking into account the threats that “Vranjske” have been exposed to almost constantly, as well as the fact that this was not the first burglary of the weekly’s premises and that previous police investigations were unsuccessful, it may be reasonably assumed that the latest incident was not a common burglary. The theft of equipment may have well been an attempt to intimidate the journalists of the weekly and put pressure on them, as well as to discover what topics they were investigating and preparing, or even worse – try to uncover the sources of “Vranjske”’s reports.

1.2. After the report in the daily “Blic” about a “rigged” tender for the fencing of several village football fields by the councilor of the Democratic Party of Serbia in the Aleksandrovac

Municipal Assembly, on May 4, the President of the Assembly Tomisa Savkovic banned Blic's correspondent Gvozden Zdravic from entering the assembly hall where the session was held. The heads of the Socialist Party and the Democratic Party's parliamentary groups called on Savkovic to reverse his decision and enable all reporters to work without obstruction, in the interest of free information, but Savkovic remained relentless.

According to the Public Information Law, local self-government bodies must make information about their work accessible to the public under equal conditions for all journalists and all public media. In the aforementioned case, banning a reporter from attending the sessions of the Municipal Assembly over his previous reports about an issue the public had certainly the right to know about, since it involved expenditures of budget money, undoubtedly amounts to a serious violation of the right to freedom of public information.

1.3. On May 11, 2011, Ivona Palada, a five-month pregnant reporter of the daily newspaper "Kurir", and photographer Damir Dervisagic, were physically attacked in Belgrade's suburb Ledine. Palada and Dervisagic were checking on information they had received from a source, in relation to a report in the magazine "Story". In that report, it was claimed that singer Ana Nikolic, who was taking care about a Japanese baby she claimed was entrusted to her by its parents – friends of the singer's brother – after the earthquake, had in fact made everything up for PR reasons. "Kurir"'s source had claimed that the boy, photographed in the arms of Nikolic on a picture released by the newspapers, was in reality the son of a Chinese couple living in Belgrade in a rented apartment in Ledine. Palada claims she has seen the boy resembling the one from the picture published in the newspapers on the address provided by the source. She also claims that the woman, who opened the door to them, refused to corroborate the story they were told by the source, but that the neighbors had confirmed the claims. When the reporter and the photographers headed back to the office, they were approached by a fifty-two year old man, who started shouting on her, threatened her with a lawsuit, wrested away the documents from her hands and swung his hand towards her. The photographer prevented him from hitting Palada and the police came shortly.

The Public Information Law expressly provides that it shall be prohibited to put physical or any other kind of pressure on a public media and its personnel, as well as exercise any kind of influence so as to obstruct them in doing their job. Journalists' associations were quick to condemn the attack. "We hope that at least in this case, where it is clear who the attacker was, how the attack happened and how the threats were made, the reformed Serbian judiciary will not find mitigating circumstances and that they will send a message that the practice of impunity and symbolic sentences shall have been terminated", UNS' statement said. NUNS

said that it was seriously concerned over repeated attacks on journalists and stressed it was the consequence of disturbingly lax penalties for thugs”.

1.4. The police in Becej have filed a request for misdemeanors proceedings against four locals from Backo Petrovo selo under suspicion of having beaten up the journalist of the daily “Magyar Szo” Szögi Csaba, who sustained minor bodily harm. The suspects are Gabor Z (23), Tamasz E. (19), Atila S. (23) and a juvenile person, the police’s press release said. Szögi Csaba was attacked and beaten up on April 15. The victim said he believed the attack was related to a series of denigrating reports on journalism in Vojvodina, posted in late February on an extreme right-wing Internet portal in Hungarian language, since during the incidents the attackers have uttered a phrase posted on the portal.

One may not deduce from the press release of the police in Becej what offense the attackers have been charged with. However, the media reported that these individuals had inflicted minor bodily injuries, which points out to potential criminal liability, either for the said injuries – which may be prosecuted on the basis of a private lawsuit – or for a qualified form of violent behavior. Under the law, a qualified form of violent behavior involves harassment or violence posing a considerable threat to public order, if committed as part of a group, or if the victim should suffer minor bodily harm or severe humiliation. Since the highest penalty under the law for a misdemeanor is 60 days in prison and from 6 months to five years for a qualified form of violent behavior, we may see that in the aforementioned case of an attack against a reporter, even before the start of the proceedings, without stating clear reasons and arguments that made the police make such a decision, the one carrying the lightest penalty was chosen out of several different proceedings that might have been initiated.

1.5. On May 14, 2011, local radio and television station “Spektri” from Bujanovac reported that Agim Zeka Islami, an official of the Party for Democratic Action (PDD), had physically assaulted the owner of the said station Nedzhat Beluli. Islami, who is the head of the PDD office and Coordinator of the local Human Rights Committee, attacked Beluli on Friday evening in a fast-food restaurant in Bujanovac. The press release also said that the police in Bujanovac were informed of the attack and that they immediately came to make a report. According to the press release, the reason for the attack on Beluli is most probably the comment that was aired two days earlier under the title “No end in sight for the scandals of the municipal leaders in Bujanovac.” RTV Spektri claims the report has laid bare the abuse of office by the head of the local self-government Farus Islami, a high PDD official, who has found a job for his wife, with the help of the President of the Municipality of Bujanovac Shaip Kamberi. Agim Zeka Islami, the attacker on the owner of RTV Spektri Nedzhat Beluli, is the brother of the President of the local self-government Farus Islami.

The Public Information Law expressly provides that it shall be prohibited to put any kind of pressure on a public media and its personnel, as well as exercise any kind of influence so as to obstruct them in doing their job. We remind that, after the amendments to the Penal Code from 2009, “occupations relevant for public information” are considered activities of public interest and that stiffer penalties have been provided for a certain number of criminal offences against performing such activities, if these offences are related to the media job of the victims. Unfortunately, the decisions of the courts to typically sentence attackers on journalists, editors and media owners to lax penalties are obviously not a deterrent for attackers and these attacks are on the rise.

1.6. In its edition from May 19, 2011, the daily “Politika” wrote that attorney-at-law Zoran Ateljevic issued a letter to reporters and media owners threatening damage claims against the founders of media, as well as private criminal charges against responsible persons in the media, if they were to continue to write about his client Milo Djuraskovic, the owner of “Nibens grupa” company, who is in custody, under suspicion of having embezzled 32 million Euros from the Krusevac-based company FAM, with the help of seven associates. Invoking Article 504v of the Criminal Proceedings Code, Ateljevic said that participants in legal proceedings might not divulge details from the investigation and warned journalists that “this information may be released only on the basis of a written approval of the competent public prosecutor, namely investigation judge”. Ateljevic said that his client’s reputation and honor were being stained by what he believed to be lies in the media campaign. He also pointed out that facts representing an official secret were being disclosed, with the media invoking “sources” close to the police and the investigation.

Article 504v of the Criminal Proceedings Code stipulates that information about pre-criminal and investigation proceedings for criminal offenses provided for by Article 504a of the Code (organized crime, corruption and other serious criminal acts) represent an official secret and this information may not be divulged by officials or other participants in the proceedings which this information becomes available to. The Code further stipulates that this information may be released only subject to a written approval of the competent public prosecutor or judge of investigation. Since information about pre-criminal and investigation proceedings, which represent an official secret, may not leak or be disclosed by a participant in the proceedings, it seems that Ateljevic’s warning to the media represents a threat, in view of the fact that it has not been determined if an official secret has actually been leaked or not. A particular concern is the fact that the provision of the Code is imprecise and that it may lead to self-censorship and avoidance to publish analytical texts about organized crime, corruption and other serious criminal acts.

2. Legal proceedings

2.1. On May 9, 2011, three attackers on RTV B92 cameraman Bosko Brankovic were sentenced in first instance proceedings before the First Basic Court in Belgrade to house arrest and suspended sentences. Defendant Milan Savatovic was sentenced to ten months of house arrest, Stevan Milicevic to six months in prison three years on probation and Nikola Lazovic to four months in prison three years on probation. The chamber of the First Basic Court, presided by Judge Ana Trifunovic, found that the defendants were guilty of physically attacking Brankovic on July 24, 2008, during the unrest following the rally over the arrest of Radovan Karadzic. In the said attack, Savatovic kicked Brankovic first, while Milicevic and Lazovic put their hoods on and continued abusing and kicking him, along with other rioters. Brankovic was beaten up and suffered a serious bodily injury, namely knee fracture. The media reported that the immediate reason for the attack on the cameraman was the fact that he had previously filmed the attack on his colleague, the photographer for the Fonet news agency. The Association of Independent Electronic Media (ANEM) said it was appalled with the outcome of the proceedings against Brankovic's attackers. ANEM's public statement said that the sentences were inadequate, not only relative to the severity of the injuries sustained by the victim, but also in view of the threat to freedom of expression and media freedoms entailed by such an attack on journalists and cameramen who were doing their professional duties. Inadequate penalties against attackers on reporters and other media professionals, which have, in Serbia, become more a rule than an exception, represent a serious burden for freedom of expression. Instead of sending a message to thugs that violence against journalists, cameramen and reporters was unacceptable, ANEM said, the Court's message to the media was that some things were better be left unreported about. The Independent Journalists' Association of Serbia (NUNS) addressed an open letter to the public, expressing dissatisfaction over the sentences against the attackers. "The fear from the thugs and the understanding, and even vindication of violence as an unavoidable part of our social life, has reached unbearable proportions," the letter said. The Republic Public Prosecutor's office said it would do everything within its powers to remedy the injustice suffered by Bosko Brankovic due to the verdict of the First Basic Court in Belgrade. The Prosecutor's Office announced it would lodge an appeal against the decision on the duration of the sentences and request stiffer penalties. The Prosecutor estimated that such inadequate penalties did not contribute to the purpose of punishment and that they sent a poor message, which encouraged violent thugs and made the citizens feel unsafe. The statement also said that the court had ruled differently in similar situations – the attacker on Member of Parliament Velimir Ilic had been sentenced to two years in prison, while it had practically rewarded the hooligans who had injured B92's cameraman.

Savatovic, Milicevic and Lazovic were sentenced under the indictment for the criminal offense of participating in a group that committed a criminal offense provided for by Article 349 of the Penal Code of the Republic of Serbia. Under the said Article, the person participating in a group that has collectively inflicted a serious bodily injury to another person, may be sentenced to between three months and five years in prison, while the ringleader may be sentenced to imprisonment ranging from one to eight years. House arrest is a possibility under the Penal Code, which says that a one-year house arrest shall be implemented by having the indicted confined to their residence, with the exception of situations provided for by the law governing the enforcement of criminal sanctions. The provisions of the Penal code concerning the weighing of the penalty stipulate that the court shall weigh the penalty within the limits prescribed by the Law for a specific criminal offense, taking into consideration the purpose of punishment and all mitigating and aggravating circumstances, namely: the degree of guilt; the motives behind the commission of the offence; the degree of threat or injury to the protected property; the circumstances under which the offense was committed; the previous record of the perpetrator; his personal situation; his demeanor after the commission of the criminal offense and particularly his attitude towards the victim; as well as other circumstances pertaining to the personality of the perpetrator. We may only hope that we will be able to see which of the aforementioned circumstances did the court consider in such a drastic case of an attack against a cameraman discharging his professional duties in the detailed written explanation of the verdict, which is yet to be written and furnished to the parties. Until then, we have no choice but to agree with the estimation voiced by, among others, the Republic Public Prosecutor, that such inadequate penalties are not conducive to achieving the purpose of punishment and that they send a bad message that encourages violent thugs.

2.2. The Appellate Court in Belgrade has revoked the first-instance verdict against Milos Mladenovic and Danilo Zuza, under which they have been sentenced to three years in prison each for the attack on the columnist of the weekly "Vreme" Teofil Pancic and ordered a new trial to be held, the Court's statement said. The first-instance verdict was revoked due to substantial infringement of criminal proceedings, because the verdict did not contain "reasons about decisive facts and the proper explanation as to the circumstances that are crucial for the criminal penalty". In the Appellate Court's view, the First Basic Court has failed in the proceedings to infer an reliable conclusion that Mladenovic and Zuza knew they were attacking journalist Teofil Pancic, or that that the motive of their attack was Pancic's status as a journalist or their disagreement with the content of his texts, which was the reason why the first-instance verdict could not have been reviewed in the part of the decision about the pronounced penalty. Teofil Pancic said that the Appellate Court in Belgrade had revoked "a poor verdict". However, he indicated he was not clear about the motive for such decision, the daily "Danas" reported. "I'm still not clear about whether the Appellate Court has seen the

same problem I see with that verdict, which is the fact that the first-instance verdict has totally disregarded my occupation as a journalist and has fallen for the explanation of the attackers, who claimed they had assaulted me randomly. I don't contest the revoking of the verdict, but I question the motive behind such decision – was the motive to establish the truth, or to further weaken an already shaky verdict?”, Pancic said.

The attack on Pancic took place on July 24, 2010, at about 11 PM, in a public transportation bus in Zemun. Zuza and Mladenovic stalked Pancic and attacked him inside the bus with a club, hitting and kicking him. The First Basic Court in Belgrade sentenced them on September 21 to three months in prison each, for the criminal offense of violent behavior. They were also sentenced to restraining order. Under the Penal Code, violent behavior is defined as a substantial threat to citizens' peace or public order committed in the form of grave insults or abuse of others, violence, instigating a brawl or ruthless behavior. Such behavior shall be subject to a prison sentence of up to three years. If it results in a minor bodily harm, which actually did happen in the concrete case, the Penal Code provides for a prison sentence ranging from six months to five years. The verdict against Mladenovic and Zuza, under which they were sentenced to a penalty that is below the minimum provided for by law, was criticized by the public as inadequate, just like the verdict against the attackers on Bosko Brankovic. The decision of the Appellate Court to revoke such verdict represents an opportunity to weigh the penalty differently in the repeated proceedings. Unfortunately, the track record of Serbian courts in many similar cases involving attacks on journalists and the media does not leave much space for optimism.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

On a session held on May 5, 2011, the Constitutional Court of Serbia declared the provisions of the Law on Amendments to the Public Information Law to be unconstitutional. These provisions authorize the competent minister to regulate, in more detail, the manner of keeping the Public Media Register, namely determine the time periods for passing such regulations and for submitting the application for registration with the said Register. The Constitutional Court found that the Public Information Law did not contain at all provisions regulating the procedure of registration with the Public Media Register and the manner of keeping such Register and that accordingly, the authorization given to the competent minister was essentially outside of the constitutional powers of the executive branch,

representing an authorization for independent regulation of both the manner of keeping the Register and the procedure of registration with the Register. Therefore, the Constitutional Court has found that the contested provisions of the Law on Amendments to the Public Information Law are not in accordance with the constitutional principle of separation of power and the constitutional position of the public administration as a part of the executive branch. The Court also found the regulating the manner of keeping the Public Media Register to be directly linked to the realization of the constitutionally guaranteed freedom of media, since the manner, in which these two issues are regulated, greatly determines the realization of the constitutional guarantee that newspapers and other means of public information should be established freely, without authorization. Bearing in mind that, in keeping with the Constitution, the manner of realization of guaranteed rights and freedoms may be regulated solely by Law, the Court found the contested provision to be unconstitutional in that respect too.

We remind that on a session held on July 22, 2010, the Constitutional Court passed a decision, published in the Official Gazette no. 89/2010, declaring unconstitutional the provisions of the Law on Amendments to the Public Information Law from 2009, which have granted the right to establishment of public media to domestic legal persons only. The court also declared unconstitutional the provisions committing the Public Prosecutor to initiate proceedings for commercial offense and request the measure of temporary suspension of the publishing of a public media where such publishing, as an activity, is not registered with the Register. In the same decision, the Court also determined the draconian, multimillion fines against the media to be unconstitutional. The new decision of the Constitutional Court determined the provisions of the Law on Amendments to the Public Information Law, to be unconstitutional, which concern the manner of keeping the Public Media Register, authorize the competent minister to regulate in more detail the manner of keeping the Public Media Register, namely to pass regulations with that purpose. All this practically means that, two years later, nothing actually remained of Law on Amendments to the Public Information Law from 2009, which had strained to the extreme the relations between the media and the government, expressing the total lack of trust between them, but which has also revealed the willingness of the government to disregard and crush the fundamental human rights and democratic principles in its crackdown on the media. This is a victory for human rights, but also for the right to free expression and elementary democratic principles. It is not, however, a reason to rejoice. Two years after the adoption of the notorious Law on Amendments to the Public Information Law, the problem of the lack of capacity of both the legislator and the competent ministries to regulate in a comprehensive and socially acceptable manner, the important social relations in the field of media, remains as grave as it was before 2009. This is precisely why today we remain concerned for media freedoms in Serbia.

2. Broadcasting Law

On May 5, 2011, on its Third Session of the First Regular Siting in 2011, the Parliament of the Republic of Serbia passed a decision on the election of three members of the RBA Council, at the proposal of the Parliament's Culture and Information Committee. The Parliament elected Milos Rajkovic, Slobodan Veljkovic and Bozidar Nikolic. Nikolic was born in 1942, he is a graduated photography director and during his 30-year service in RTS, he has made about fifty television dramas, several documentary and show programs. Rajkovic was born in 1960, he is an Economist and Graduated Manager and a journalist by vocation. Veljkovic was born in 1950, he is a Graduated Lawyer and since May 2009, an Editor in Radio-Television Vojvodina.

The Broadcasting Law stipulates that the Parliament must pass the decision on the election of new members of the RBA Council prior to the expiration of the term of office of previous members. In this case, the term of office of the three previous members of the RBA Council – Nenad Cekic, Aleksandar Vasic and Vladimir Cvetkovic, who were elected at the proposal of the Culture and Information Committee – expired back on February 17. Hence, the Parliament practically left the RBA with an incomplete Council for almost three months. This has created a situation where the RBA Council has functioned almost deprived of a quorum for decision making, namely even for passing decisions which require, under the Broadcasting Law and the RBA Council Statue, a qualified majority. We remind that the Broadcasting Law stipulates that the Speaker of the Parliament shall issue a public call for the submission of proposals for a list of candidates for the Council no later than within six months prior to the expiration of the term of office of the previous member of the Council. The authorized proposers shall, no later than within two months from the issuance of the public call, submit to the Parliament a proposed list of candidates for the vacancies. In practice, however, the said time period is often insufficient for the Parliament to pass a decision on the election of members, thus compromising the functioning of the regulatory body.

3. Law on Free Access to Information of Public Importance

On the occasion of the Word Press Freedom Day on May 3, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic sent letters to the presidents of the Journalists' Association of Serbia (UNS), the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina (NDNV), indicating that journalists and media in general were increasingly

invoking the rights from the Law on Free Access to Information of Public Importance, putting the said Law in the function of informing the general public. “This is undoubtedly a good thing,” Sabic said. However, he warned that “it is not good, regardless of the progress achieved, to have the many problems that still remain. Therefore, it is high time to seriously activate the mechanisms of calling to account those who breach the law.” Sabic found that the principle of transparency of government operations commit the authorities to provide to the public much more information in the most adequate way, proactively, by publicly presenting the available databases and posting such information online. In Sabic’s opinion, the existing level of electronic communication of our government and the citizens is not satisfactory and the situation in that respect requires much faster changes. Sabic also pointed to the existence of various mechanisms of implicit censorship in the Serbian society.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament of the Republic of Serbia did not adopt any regulations of relevance or implications for the media sector.

IV MONITORING OF THE ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

In the period covered by this Report, the RBA Council has held two regular sessions, this time in full composition after a quite a while, since the sessions were also attended by three new members elected on May 5, 2011. At the first session, the Council gave the green light for amendments to the Statute of the Radio-Television Vojvodina, in the segment concerning the competitions criteria to apply to the candidates for the position of General Manager, which is within the RBA Council’s powers pursuant to Article 89 of the Broadcasting Law. The session was also attended by the newly-elected members of the RTS Managing Board, who informed the RBA Council about their view of the situation in broadcasting. The following session saw the adoption of the audit report of the RBA for 2010, as well as the report on the realization

of the RBA's financial plan for 2010. However, these reports have not been released publicly and hence we are unable to comment on them. We remind that, according to the Broadcasting Law, the Agency shall release a financial plan and revenue and expenditures report. Pursuant to the Law, the revenue and expenditures report must be published no later than three months after the expiry of the financial year.

At the Council's session held on May 18, Radio Fokus was reprimanded for having violated the provisions from the Broadcasting Law concerning hate speech, provisions banning political advertising outside of the election campaign, as well as provisions of the Broadcasters's Code of Conduct concerning the ban on favoring in one's program, or expressly discriminating against of lawfully established political parties, namely the obligation to suppress offensive speech. The decision containing the reprimand is yet to be posted on the RBA's website. Radio Fokus is a station with national coverage that is often mentioned in the public as an unacceptable example of a media outlet that has placed itself completely at the service of one political party, namely the Serbian Progressive Party (SNS). Such bias program reached its peak during the events following the rally of the SNS and several others opposition parties on April 16, 2011 and the ensuing hunger strike by SNS leader Tomislav Nikolic. In view of the above, in addition to the fact that the explanation of the reprimand has not been published, such measure is completely understandable and most probably too lenient.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

On May 24, 2011, the Republic Agency for Electronic Communications initiated public consultations about the draft decisions on determining the operator with significant market strength on relevant markets, subject to prior regulation. We remind that one of these markets is the one of media content distribution. In the draft of one of the decisions, subject to public discussion, the cable operator SBB is appointed as operator with significant market strength on the retail media content distribution market. The draft decision lays down for SBB the obligation to release certain information, non-discrimination, accounting separation and control of prices and application of cost-based accounting.

The Law on Electronic Communications stipulates that, in order to foster competition on the market, operators with significant market strength shall be imposed special conditions under which they will perform electronic communications activities. The operator has significant market strength on the relevant market if it enjoys, on its own or together with other operators, a dominating position, enabling it to act, to a considerable extent, independently

from its competitors, subscribers and consumers. Under the Law, when RATEL determines, on the basis of a prior market analysis, an absence of effective competition on the relevant market, it will enact a decision determining the operator with considerable strength and imposing such operator certain obligations, namely conditions under which it will operate. The obligations that may be imposed are provided for by the Law. If the draft decision pertaining to SBB is adopted as proposed, SBB would be obliged to release certain information, which would first and foremost concern accounting data and the standard retail offer. SBB would also be required to refrain from discriminatory practice in comparable circumstances, as well as to pursue separate accounting oversight of business activities pertaining to the service of media content distribution, relative to the operator's other business activities. Finally, SBB would bear the burden of proof i.e. to demonstrate that the price of its retail media content distribution services stem from the costs, while RATEL would be entitled to order that these prices be adjusted, if found they were not cost-based. Such decision, if passed, would replace the incumbent RATEL decision, which has placed SBB's prices under control as of February 2007. The same decision from 2007 has also bound SBB to keep separate accounting of revenues and costs and hence, the draft decision does not represent anything new in that respect. In practice, the majority of smaller operators have adjusted their prices to those of SBB. It remains to be seen if the new concept would contribute to solving the problems highlighted by the media and whether SBB will provide the same media content distribution services to various media under different conditions.

STATE AUTHORITIES

3. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On May 16, 2011, the Ministry of Culture, Media and Information Society issued a press release saying that, in accordance with the Protocol, signed together with six media associations (NUNS, ANEM, UNS, NDNV, the Media Association and Local Press) an expert working group had been formed, tasked with proposing a Draft Strategy for the Development of the Public Information System in the Republic of Serbia by 2016, along with an action plan for the implementation of that Strategy, by June 1, 2011. The working group has seven members, of which three were proposed by NUNS, ANEM, UNS, NDNV and Local Press, while two each were proposed by the Media Association and the Ministry itself. We remind that the Protocol on Cooperation, detailing the steps for making the Draft Strategy for the Development of the Public Information System in the Republic of Serbia by 2016, was signed on April 18.

On May 26, 2011, the State Secretary of the Culture Ministry, Dragana Milicevic-Milutinovic, confirmed in an interview for the daily Danas that the Draft Media Strategy would be completed by June and that it was expected to be tabled to the Government as early as in mid-July. After that, she said, it would be up to the Government to decide when to put the Media Strategy on its agenda and decide about the adoption thereof. The State Secretary did not elaborate on the content of the future Draft Media Strategy, but stressed she personally thought it was impossible to set up 15 regional public service broadcasters in the manner that was provided by the Media Study, drawn up by experts hired by the European Commission. “My personal opinion is that this is unfeasible, because the question would be how to fund 15 regional public service broadcasters on top of the existing two. They may not be funded from the subscription fee, which is already difficult to collect and you cannot cut back resources from the Public Service Broadcaster. On the other hand, we may ask if it is appropriate to deny the citizens in these regions the right to be informed about issues relevant for their local communities. I hope that the working group will have a quality proposal and that we will reach a relatively equitable solution through the public discussion”, Milicevic-Milutinovic said.

4. COMMISSION FOR COPYRIGHT AND RELATED RIGHTS

In early May, ANEM, as a representative association of broadcasters users of musical author works, received the conclusion sent by SOKOJ, the organization of musical authors of Serbia that had asked ANEM to state its written opinion about SOKOJ's Proposal of the tariff of fees. In this way, after almost one year after SOKOJ and ANEM failed to reach an agreement on the tariff and after SOKOJ requested opinions about its Proposal of the tariff of fees, the procedure has entered the phase in which the Commission has sent the proposed tariff to the representative association of users for opinion. The delay was caused, on one hand, due to the feet dragging of the Government in appointing the Commission for Copyright and Related Rights and, on the other, the slow work of the Commission which, although it was established late last year, has only now called the representative association of users to submit an opinion about the proposed tariff.

However, ANEM has not received, along with the Proposal, SOKOJ's explanation as to why the proposed tariff is supposed to ensure an amount of the fees that will be proportionate to the relevance of the protected object from SOKOJ's repertoire to the revenues of the users; what is the rationale for SOKOJ to justify the proposed lowest amount of the fees for the exploitation of the protected objects; or as to the question if SOKOJ, in proposing the said tariff, has taken into consideration the tariffs of collective organizations of states with a GDP similar to the one of Serbia. Namely, the percentage of the fee allocated in SOKOJ's proposal

ranges from 2.20% of revenues for television and 2.50% of the revenues for radio, to 4.20% of revenues for television and 4.50% of the revenues for radio. The currently applicable tariff ranges from 2.50% to 3.50% of revenues for television and radio, i.e. the proposed new tariff is actually less favorable than the current tariff. In line with the Law on Copyright and Related Rights, ANEM must, within one month, submit its opinion about SOKOJ's Proposal for the tariff.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

5. ORGANIZATION FOR COLLECTIVE ADMINISTRATION OF PERFORMING RIGHTS (PI)

Organization for Collective Administration of Performing Rights (PI) from Belgrade, one of the three organizations holding a license of the Intellectual Property Office for the collective realisation of copyright and related rights (the remaining two are the Organization of Phonogram Producers of Serbia - OFPS and Serbian Music Authors' Organization - SOKOJ) announced that it was admitted to the Societies' Council for the Collective Management of Performers' Rights -SCAPR on the regular annual session of that organization's assembly, on May 17, 2011 in Washington, as an affiliate member.

Article 186 of the Law on Copyright and Related Rights stipulates that the organization for the collective realisation of musical performers' rights, under an agreement with the relevant foreign organizations, shall provide for the collective realization of the rights of domestic holders abroad, as well as of foreign holders in Serbia. The organization shall fulfill this obligation within five years from acquiring the first permit for the performance of its activity. Organization for Collective Administration of Performing Rights (PI) obtained its first permit on the basis of Intellectual Property Office decision no. 6737/07-2 dated June 6, 2007, among other things, for the realization of the right to a fee for the broadcasting and rebroadcasting of an interpretation from the recording issued on a sound carrier, the public communication of the interpretation broadcast from the recording issued on a sound carrier and the public communication of the interpretation broadcast from the recording issued on a sound carrier. According to the information that are currently available on the webpage of Organization for Collective Administration of Performing Rights (PI), in the first years since the issuance of its first work permit, it has concluded merely four bilateral agreements with the relevant foreign organizations, namely those from Cyprus, the Russian Federation, Kazakhstan and Ukraine. Since the main goal of SCARP is the development and improvement of bilateral organizations between collective performers' rights organizations, the consequence of PI's membership in SCARP could have been new bilateral contracts.

SCARP members are collective organizations from Argentina, Austria, Brazil, Bosnia-Herzegovina, Canada, Chile, Croatia, the Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, the Netherlands, Island, Ireland, Japan, Latvia, Lithuania, Malaysia, Norway, Poland, Portugal, Korea, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, Great Britain and the United States. From the short news posted on the website of Organization for Collective Administration of Performing Rights (PI), one may not deduce why that organization was admitted only as an affiliate member, or what is the difference between full-fledged membership and affiliate membership.

V THE DIGITALIZATION PROCESS

By April 4, 2012 Serbia should have switched to the digital broadcasting of television signal, State Secretary for the Digital Agenda Jasna Matic said. She told the Beta news agency that Serbia enjoyed great support from the EU in that process, in the form of consulting, provided by a consortium run by the BBC, as well as through a 10-million Euro grant for the purchase of equipment for digital television broadcasting. Matic said it would be good to make a plan in the meantime concerning the allocation of analog frequencies, which would be released after the digital switchover.

We remind that the deadline for the digital switchover in Europe is June 17, 2015, according to the GEO6 Agreement, signed by Serbia in 2006 in Geneva. However, in its Digital Switchover Strategy, taking into consideration the recommendation of the European Commission, COM (2005) 204, through which EU member states were suggested to suspend analog broadcasting and switch over completely to digital television by early 2012, striving to avoid a major delay behind its neighbors that are already EU members, Serbia has scheduled its terrestrial digital switchover for April 4, 2012. Unfortunately, despite EU support mentioned by the former Minister for Telecommunications and Information Society, now incumbent State Secretary for the Digital Agenda Jasna Matic, Serbia is already well behind in the implementation of the Action Plan accompanying the Digitalization Strategy and consequently it is highly unlikely that the aforementioned deadline will be met. The sooner the Ministry of Culture, Media and Information Society admit that and set sustainable deadlines for this process, the odds that Serbia will ultimately complete the digital switchover will be greater.

VI THE PRIVATIZATION PROCESS

After three failed auctions, on which there were no buyers, the Privatization Agency scheduled for June 10 the fourth auction for the sale of the public company “Radio Pirot”, Blic-Serbia reported. The initial price on this auction exceeds the price on previous ones and amounts to 3.4 million dinars, the minimum investment is 1.1 million dinars and the deposit is 1.7 million dinars. The deadline for the purchase of the documentation is June 2, while the deadline for applying is June 3. A few months ago, at the request of the Pirot Municipal Council as founder, the managing board of Radio Pirot did a new job description and reduced the number of employees from eleven to six. This station has its own 100 m² business premises in downtown Pirot and it remains the only non-privatized media in town. The reduction of the number of staff has attracted potential buyers for the auction. Blic has learned that three interested buyers have called in – one from Pirot and Nis each and one from abroad.

Meanwhile, the media have reported that the local television station TV Valjevo was appointed a representative of state capital in May, although the Privatization Agency had terminated the contract with the former owner of the station Slobodan Pavlovic from Urovec, near Obrenovac, over unfulfilled obligations, back on March 28. TV Valjevo is on the brink of being closed down over a five million RSD debt, the daily Blic reported. The amount of the debt seems not to be final, since that new claims are emerging against the station. TV Valjevo has ceased to broadcast news program as of the end of last year and it was recently deprived of the signal, when former Editor Aleksandar Rankovic, on the basis of an enforceable ruling over unpaid salaries and benefits, seized part of the studio broadcasting equipment. Rankovic returned the equipment when part of his salaries was paid and then again seized an editing suite in March over unpaid debt. Another three former employees are said to be planning to come to seize equipment over unpaid salaries. The temporary representative of state capital Branko Trifunovic from Arandjelovac has tried to make an agreement with the former employees and convince them to merely itemize the equipment and wait until the station is able to pay them their unpaid salaries, but they refused.

In Pancevo, the President of the Municipality Tigran Kis said that he had sent, together with the Mayor Vesna Martinovic, a letter to state institutions, informing them that the city administration was interested in acquiring the majority share in the local weekly “Pancevac”, Blic reported. Tigran Kis explained that on May 25, the Privatization Agency would offer the shares of Pancevac on the Belgrade Stock Exchange and said that he had called an extraordinary session of the City Council for May 21 to discuss it. The weekly “Pancevac” was sold in February 2008 to the businessman from Loznica Dobrosav Markovic, who offered 2.2

million Euros on an auction. The Privatization Agency ruled that the price shall be paid in six installments, but Markovic paid only one and hence the contract was terminated.

The above news point to the necessity of having a systemic solution for the problem of privatization of both public and former social media in Serbia. The problem in Valjevo is reminiscent of the situation in Sombor, where Radio Sombor ended up without electricity due to unpaid bills, three years after its privatization was annulled (during which period the station was operated by the state through a representative of state capital). The fact that there is little interest on the auctions for the sale of media outlets, as well as that already concluded privatization agreements are often terminated over unfulfilled contractual obligations by the new owners, point to a seriously flawed media market. The attempt to attract potential investors by streamline the business of stations and cutting on the number of employees, as it was the case with Radio Pirot, is only one of possible solution, albeit being a partial one. It seems that the key concern for investors, deterring them from investing in the media sector, is too many media on the market, especially broadcast media. Furthermore, they are scared off by a weak advertising market, especially outside of Belgrade and the major cities, as well as the lack of transparency and occasional discrimination in the allocation of state aid. Until the state offers incentives for the consolidation of the market and until it regulates state aid procedures, making them more equitable and procedures more transparent and encouraging media content relevant for the citizens, the problems of non-privatized public media, but also those of already privatized commercial media, will not be solved. Absent of such solutions, certain local self-governments opt for the maintenance of direct ownership of media, as in the case of Pancevo and the weekly “Pancevac”. Not only is it directly in contravention to the Public Information Law, which expressly states that the state and the territorial autonomy may not be, directly or indirectly, the proprietors of media, but it also fuel doubts about the willingness of local self-governments, in the situation where they are the direct owners of certain media, to fulfill their obligation, provided for by the Law on Local Self-Government, to attend to public information of local interest and ensure conditions for non-discriminatory public information.

VII CONCLUSION

Most problems, faced by the media in Serbia for years, were still there in May. The Public Information Law and its provisions prohibiting restrictions to freedom of information, the free flow of ideas, information and opinions, putting any kind of physical or other kind of pressure on the media and its staff and exerting influence in order to obstruct their work, have been shown to be ineffective in practice. The above has been particularly true in

relation to the penal policy and the practice of courts of law, which was unacceptably soft to those who put these freedoms at risk. It seems that the political will to change things is currently limited to the imminent bringing of the Media Strategy. While it is a step in the right direction, the state and its agencies should be proactive in implementing the regulations that are already in force. The authorities namely continue to exceed deadlines they have set themselves, such as in the case of the election of RBA Council members. The state remains inexplicably passive in fulfilling its obligations under the Law on Free Access to Information of Public Importance, as it was repeatedly indicated by the Commissioner for Information of Public Importance and Personal Data Protection. Furthermore, the state is also slow in settling the tariff disputes between the collective organizations for the protection of copyright and related rights, resulting in the media continuing to pay the respective fees under the old tariffs, a year and a half after the adoption of the new Law on Copyright and Related Rights – the previous law was changed in 2009 precisely due to the fact that tariffs were excessive and unjust. The new law provided for new tariffs and a new principle, which remains unenforced in practice, under which the users, and not only the collective organizations, must be consulted when determining the amount of the said tariffs. Meanwhile, the media, particularly those at the regional and local level, have continued to suffer, one of the reasons being the fact that there are still too many of them, especially radio and TV stations. At the same time, the advertising market is poor and undeveloped, which situation is partly caused by a opaque and discriminatory approach to state aid. The latter typically goes to state media and those obedient or close to local authorities, resulting in seriously restricted media freedoms, lack of competition and lack of attractiveness for foreign investors. Instead of solving this problem by regulating access to the much-needed state aid in a consistent, transparent and non-discriminatory manner, the local authorities in many cities and towns across Serbia have opted to hold on to their share in media, keeping the media on direct budget financing, so as to retain and further strengthen the mechanisms of political influence and control over editorial policy, which ultimately results in restricted freedom of expression.